

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
08/09/2001

*** FILED ***
08/13/2001
CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2000-002205
Docket Code 512 Page 1
FILED: _____

STATE OF ARIZONA
v.
JEFFREY MARK WYGLE

B DON TAYLOR

LAWRENCE I KAZAN

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT
Cit. No. #5850637
Charge: 2. DUI W/AC OF .10 OR HIGHER
DOB: 12/12/68
DOC: 02/19/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court and the Memoranda submitted by counsel.

On February 19, 2000, Appellant was arrested and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 Misdemeanor in violation of A.R.S. Section 28-1381(A)(1), and having an alcohol concentration greater than .10 within two hours of driving, a class 1 misdemeanor in violation A.R.S. Section 28-1381(A)(2). Appellant filed a Motion to Suppress which was heard by the lower court on November 30, and December 1, 2000. Following the hearing, Judge Karyn Klausner denied Appellant's motion. At the time scheduled for trial, Appellant and the State waived their rights to a trial by jury and the matter was submitted to Judge Klausner for ruling based upon a stipulated record consisting of the Phoenix Police Departmental Report. After trial Judge Klausner found Appellant guilty of Driving with a Blood Alcohol Concentration Greater than .10 and not guilty of Driving While Under the Influence of Intoxicating Liquor.

On December 18, 2000, the judgment of guilt was entered as to Count 2 and Appellant was ordered to serve ten days in jail, complete a substance abuse screening, and pay a fine of \$443.00. A timely Notice of Appeal was filed by Appellant in this case.

The only issue raised on appeal concerns the sufficiency of probable cause possessed by the officers to arrest the Appellant. Both parties have submitted excellent memoranda to this Court addressing the legal and factual issues.¹

Probable cause to make an arrest exists when the police have reasonably trustworthy information that would lead a person of reasonable caution to believe that an offense has been committed and that the person to be arrested committed it.² This Court's review on the sufficiency of probable cause is *de novo*; however, this Court must defer to the trial court's factual findings that form the basis for its legal rulings.³ And, if the trial court's ruling on the existence of probable cause is supported by substantial evidence in the record this Court must affirm the trial court's ruling.⁴ This Court must also defer to the trial court's findings where there are conflicts within the evidence.⁵ The trial court as fact finder occupies the most advantageous position of weighing the credibility, veracity, and reliability of witnesses and other evidence.

Warrantless arrests are authorized by A.R.S. 13-3883 and require "probable cause to believe the person to be arrested has committed the offense". Probable cause has also been defined as "information sufficient to justify belief by a reasonable man that an offense is being or has been committed."⁶ The finder of fact must determine from the evidence what facts and circumstances the police were aware of at the time the arrest was made. The trial court must determine if these facts and circumstances were sufficient to give the police officers reasonable cause to believe that their suspect had committed an offense.⁷

In this case the trial judge found:

With regard to the arrest, once having made the stop for speeding and observed slight sway albeit a slight bloodshot watery appearance, an odor of alcohol and the declining of doing field sobriety test, coupled with what the officer saw again based on what this Court understands the case law to be, not a lot, but enough for

¹ Appellant has very effectively utilized the legal citation style of Bryan A. Garner. This style has also been adopted by the Texas Supreme Court in *TXU Electric Company, et al v. Public Utility Commission of Texas*, 44 Tex. Sup.Ct. J. 854, 2001 WL 618186(Tex.Sup.Ct. June 6, 2001), and the Alaska Supreme Court in *Shaw v. State Farm Mutual Automobile Insurance Companies*, 19 P.3rd 588 (2001). This Court has also chosen to use that writing style for its clarity, and ease of use by non-lawyers.

² *State v. Spears*, 184 Ariz. 277, 908 P.2d 1062, cert. denied 519 U.S. 967, 117 S.Ct. 393, 136 L.Ed. 2d 308 (1996); *State v. Nelson*, 129 Ariz. 582, 633 P.2d 391 (1981).

³ *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 927 P.2d 776 (1996).

⁴ *Pharo v. Tucson City Court*, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

⁵ *State v. Plew*, 155 Ariz. 44, 745 P.2d 102 (1987).

⁶ *Pharo v. Tucson City Court*, 167 Ariz. at 573, 810 P.2d at 571, citing *State v. Heberly*, 120 Ariz. 541, 544, 587 P.2d 260, 263 (App. 1978).

⁷ *State v. Boles*, 183 Ariz. 563, 905 P.2d 572, review granted in part, denied in part, opinion vacated 188 Ariz. 129, 933 P.2d 1197 (App. 1995).

an arrest. So, the Court denies the Motion to Suppress and holds that in fact there was a reasonable basis for the stop and probable cause to make the arrest.⁸

The trial judge's findings appear to be well supported by the record. Phoenix Police Officer, Brandon Epperson testified that Appellant's driving, specifically the speed of his left turn was inappropriate and from the wrong lane.⁹ Phoenix Police Officer Paul Rutherford testified that Appellant veered into the fast-lane and drove very fast away from him, at approximately 50-55 miles per hour.¹⁰ Officer Epperson noticed that Appellant's breath smelled of alcohol.¹¹ Officer Rutherford observed Appellant's eyes to be bloodshot and watery.¹² Officer Rutherford also observed Appellant to sway.¹³ Thus, the Phoenix Police Officers had reasonable grounds to believe that Appellant had been driving a motor vehicle while under the influence of intoxicating liquor. Appellant's arrest was proper and the trial judge did not err in denying Appellant's Motion to Suppress.

For all of the foregoing reasons,

IT IS ORDERED affirming the finding of guilt and sentences imposed in this case.

IT IS FURTHER ORDERED remanding this case back to the Phoenix City Court for all future proceedings.

⁸ R.T. of December 1, 2000 at 102-103.

⁹ R.T. of November 30, 2000 at 21.

¹⁰ Id. at Page 57-59.

¹¹ Id. at 21, 35.

¹² Id. at 53.

¹³ Id. at 66.